

Misconduct restraining orders - information



If someone you know such as a neighbour, work colleague or someone you are in a club with, is behaving in a way that is making you reasonably feel intimidated, offended or fearful, or causing damage to your property, or acting in a way that may lead to a breach of the peace, you might need a court order to stop the behaviour. The order has rules ('conditions') about how the other person can behave towards you.

This information is for people who wish to apply for a misconduct restraining order (MRO) to stop this sort of behaviour.

If:

- you are in a family relationship with the person you may need to apply for a family violence restraining order (FVRO). See the Legal Aid WA information sheet: Family violence restraining orders – information.
- the behaviour you want to stop involves personal violence (for example assault or stalking) from a non-family member you may need to apply for a violence restraining order (VRO). See the Legal Aid WA information sheet: Violence restraining orders – information
- you have received a summons to go to court for an MRO see the Legal Aid WA information sheet: Responding to a restraining order application.

If you are applying for the order you are called the “applicant” or the “person to be protected”.

The person who you want the order against is called the “respondent” or, if the order is made, the “person who is bound”.

This information sheet should be used with legal advice.

What can an MRO do?

An MRO may make conditions to stop the respondent doing whatever the court thinks is necessary. This will often depend on the circumstances of each case.

Note: The court cannot make a restraining order against a child under the age of 10 years.

The MRO can include stopping the respondent from:

- being on or near premises where you live or work
- being on or near a named building, locality or place
- coming within a certain distance of you
- behaving in an intimidatory or offensive manner towards you
- contacting or attempting to contact you in any way, including ringing, writing to, SMS or text

messaging you or communicating by any other electronic means including Facebook

- being at a place even if they have a right to be there
- preventing anyone from entering a place
- getting anyone else to do any of the things listed above, or
- having a gun or a gun licence or applying for a gun licence, however this must be asked for and is discretionary.

The respondent is not automatically banned from having a gun or a gun licence

Who can apply for a misconduct restraining order?

An application for an MRO can be made in person by:

- any person seeking to be protected (or their guardian)

- the parent/guardian of a child or child welfare officer (eg a Department of Communities (Child Protection and Family Support Division) case manager) for a child, or
- a police officer for a person to be protected or the public generally.

How do I apply for an MRO?

You can only apply for an MRO by going to the Magistrates Court of WA or where the respondent is a child or young person under 18 years of age, to the Children's Court of WA.

A fee is payable. In some cases you may be eligible to pay a set reduced fee.

The application form can be obtained from the **Magistrates Court of WA** website or any registry.

Unlike in some FVRO or VRO applications, you cannot get an MRO straight away.

When you make your application at the court the registrar will set a court date.

The first court date is usually a "mention" date (sometimes called a "callover" date). You do not need to bring witnesses on the "mention" date. On that day the magistrate will want to:

- check if you still wish to go ahead with applying for the MRO
- see how many witnesses you have, and
- decide how long the final order hearing will take.

The second court date is normally the final order hearing. On this date you bring any witnesses and come prepared to tell the court why you need an MRO.

Different courts may have different systems. Always ring the court before a court date to check if the first date is a "mention" date or the final order hearing. See the **flowchart** below.

What do I have to prove to get an MRO?

The court may make an MRO if it thinks that without the MRO the respondent is **likely** to:

- act in a way that could reasonably make you feel intimidated or offended and would in fact actually intimidate or offend you, or
- cause damage to your property or property you have with you, or

- act in a way that is, or may lead to, a breach of the peace,

and the court thinks an MRO is appropriate in the circumstances.

A breach of the peace is a legal term meaning something that disturbs the public peace. Examples are:

- regularly screaming and shouting in a public place
- protesting in a way that prevents people from carrying out their work, or
- intimidating people who are trying to use a public open space.

What the court will take into account in deciding whether to make an MRO?

See the Legal Aid WA Information sheet **Restraining orders – court process**.

Will I have to pay any costs at court?

Sometimes the respondent may have a lawyer.

If the court decides at the final order hearing not to give you a final restraining order the respondent's lawyer may ask the court to order that you pay legal costs.

The court would usually only do this if it thought you did not really believe you needed a restraining order, or if your case was so weak it was never likely to succeed.

Do I need to see a lawyer?

You should get legal advice so that you understand:

- the legal process and what it means to you
- legal costs you may have to pay, and
- how to represent yourself if you don't have a lawyer.

Legal Aid WA or your local community legal centre may be able to assist you with legal advice.

What do I need to do if I am representing myself?

- Gather all the information you can.

- Keep all your paperwork together in a safe place.
- Think carefully about your reasons for wanting the MRO and why the respondent might object to the MRO being made final.
- Arrange for your witnesses to come to court for the hearing.
- Get legal advice about how to summons witnesses to court so that you make sure that they come.
- If you want to summons a child as a witness or you want a child to give oral evidence, unless your case is in the Children's Court, you must ask the permission of the court.
- Get information from Legal Aid WA about the court procedure at the final order hearing and information sheets that might help you to represent yourself.

When does the MRO come into force?

The MRO comes into force at the time it is served on the respondent by the police. If it has not been served, the order is **not** in force and has no effect.

If the respondent is in court at the time the order is made, the order comes into effect immediately.

How long will the MRO last?

An MRO stays in force against:

- an adult for whatever time is specified in the order or one year if no time is specified, or
- a child or young person under 18 years of age for whatever time is specified in the order. It can be no longer than six months.

What is a breach of an MRO?

If the respondent does something that an MRO says they can't do they are "breaching" the order.

You should report any breaches of the MRO to the police. If you are unsure if the respondent has breached the MRO seek legal advice as soon as possible.

If a protected person aids a breach of a restraining order, the criminal court dealing with the breach has the power to cancel or vary a restraining order.

What are the penalties for breaching an MRO?

It is a criminal offence for a respondent to breach an MRO.

The penalty is a fine of up to \$1,000.

What if I want to change or cancel an MRO?

Get legal advice as soon as possible. See the **Legal Aid WA information sheet: After a restraining order is made**.

What if I want to appeal a decision of the court not to make an MRO?

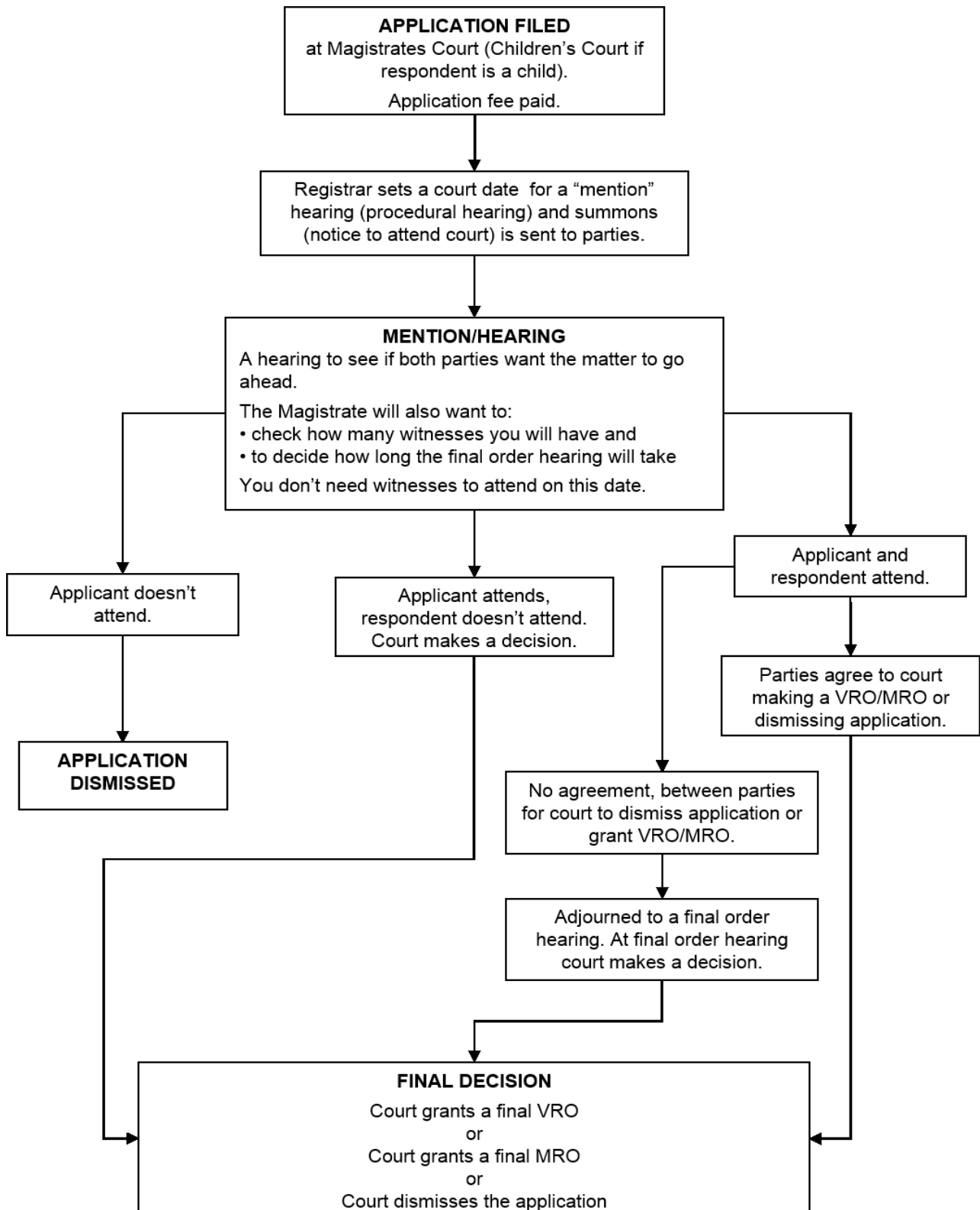
Get legal advice as soon as possible. Time limits apply. See the **Legal Aid WA information sheet: After a restraining order is made**.

Where can I get more information?

- **Legal Aid WA's Infoline** on **1300 650 579** for information or referral or go to its website to obtain copies of other information sheets that may help you prepare for and represent yourself in a restraining order final hearing.
- The [Magistrates Court of WA](#) website or a registry for facts sheets and the forms needed for court.
- You may be able to get assistance from a [community legal centre](#). Call **(08) 9221 9322** to find the one nearest to you.
- The [Law Society of WA](#) on **(08) 9324 8600** for the names of lawyers who specialise in this area if you need to pay for a lawyer.

Flowchart – Misconduct restraining order – court process

MRO court process



Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

©Legal Aid Western Australia

This information sheet may be copied, reproduced or adapted to meet local needs by community based organisations without permission from Legal Aid Western Australia provided the copies are distributed free or at cost (not for profit) and the source is fully acknowledged. For any reproduction with commercial ends, or by Government departments, permission must first be obtained from Legal Aid Western Australia.